

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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Docket No. 223,680

ORDER

The respondent and its insurance carrier appealed the preliminary hearing Order dated February 27, 1998, entered by Administrative Law Judge Floyd V. Palmer.

ISSUE

Claimant injured his left knee while working for the respondent on July 17, 1995. In June 1997, claimant returned to his doctor with bilateral knee and back complaints. The Administrative Law Judge found the right knee and back symptoms the direct and natural consequence of the left knee injury. The Judge ordered the respondent to provide medical treatment for both knees and the back. Respondent and its insurance carrier contend that the right knee and back are not the direct and natural result of the left knee injury and, therefore, are not the respondent's responsibility. That is the only issue before the Appeals Board on this appeal.

FINDINGS OF FACT

For preliminary hearing purposes, the Appeals Board finds as follows:

- (1) The claimant, William R. Smalley, injured his left knee while working for Highland Homes on July 17, 1995.

(2) Although he had left knee arthroscopy and partial medial meniscectomy in December 1995, that knee remained symptomatic and Mr. Smalley gradually developed right knee and back pain.

(3) In February 1996, Mr. Smalley terminated his employment with Highland Homes and started his own heating and air conditioning business.

(4) In June 1997, Mr. Smalley returned to his orthopedic surgeon with bilateral knee and back symptoms.

(5) In his letter dated July 22, 1997, Joseph E. Mumford, M.D., the orthopedic surgeon who operated on Mr. Smalley's left knee, writes that the problems in the right knee were probably caused by repetitive loading on the knee. In a letter dated January 12, 1998, Dr. Mumford writes that the right knee symptoms appear to be related to an increased activity in kneeling rather than to the left knee injury.

(6) Orthopedic surgeon John A. Pazell, M.D., saw Mr. Smalley in October 1997. In his letter dated October 14, 1997, Dr. Pazell writes that the right knee and back problems are probably caused by Mr. Smalley favoring the injured left knee:

Relative to his right knee, this probably represents an overuse phenomena in which he is placing more stress on the right knee in order to favor the left knee. For this problem, he could have the left knee successfully treated and the right knee's problems would improve.

There is a causal relationship, however, between the right knee and the left knee since he would not have been putting more weight on his right knee had he not injured his left knee. This being the case, his right knee should be evaluated with an MRI scan for the possibility of a meniscus tear on the right knee.

Relative to his back, I believe the back pain that he has is due to compensation in his gait and should resolve with treatment of his knee problems.

(7) Mr. Smalley testified that after the December 1995 surgery he stopped kneeling as he began using a bucket and stool to sit and perform the low work. That testimony is uncontroverted.

CONCLUSIONS OF LAW

When a worker sustains an injury that arises out of and in the course of employment, every direct and natural consequence that flows from that injury, including new and distinct injuries, are also compensable. Chinn v. Gay & Taylor, Inc., 219 Kan.

196, 547 P.2d 751 (1976); Reese v. Gas Engineering & Construction Co., 216 Kan. 542, 532 P.2d 1144 (1975).

The Administrative Law Judge found the right knee and back symptoms are the direct and natural consequence of the left knee injury. Based upon the present record, the Appeals Board agrees. The Appeals Board is persuaded by Mr. Smalley's testimony and the opinions provided by Dr. Pazell.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated February 27, 1998, entered by Administrative Law Judge Floyd V. Palmer is affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

c: James L. Wisler, Topeka, KS
Denise E. Tomasic, Kansas City, KS
Administrative Law Judge, Topeka, KS
Philip S. Harness, Director